

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID F. SMITH,¹

Petitioner Below,
Appellant,

v.

THERESA D. LANE,

Respondent Below,
Appellee.

§
§
§
§
§
§
§
§
§
§
§

No. 302, 2009

Court Below—Family Court of
the State of Delaware in and for
New Castle County

File No. CN01-09216

Pet. No. 08-33248

Submitted: December 4, 2009

Decided: March 10, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

ORDER

This 10th day of March 2010, upon consideration of the parties' briefs and the Family Court record, it appears to the Court that:

(1) By order dated November 8, 2004, the Family Court awarded David F. Smith ("Father") and Theresa D. Lane ("Mother") joint custody and shared primary residence of their child. On Mother's appeal from that order, this Court affirmed the Family Court's judgment on the basis that

¹ By Order dated May 27, 2009, the Court, *sua sponte*, assigned pseudonyms to the parties. Del. Supr. Ct. R. 7(d).

Mother had not produced the transcript that was necessary to determine the issues on appeal.²

(2) In October 2008, Father filed a motion to modify custody. After hearings on January 27, 2009 and March 10, 2009, the Family Court issued an order on March 26, 2009 that decided Father's motion.³ Thereafter, by order dated April 24, 2009, the Family Court denied Father's "motion for a new trial and/or rearguments." This is Father's appeal from the Family Court's orders of March 26, 2009 and April 24, 2009.

(3) The Court has concluded that it is without an adequate record to evaluate the merit of Father's appeal. With the exception of "partial transcript" pages of questionable relevance of hearings held in 2003 and 2004, Father has not provided the Court with transcript of the Family Court proceedings.⁴

(4) As the appellant, Father was required to produce "such portions of the trial transcript as are necessary to give this Court a fair and accurate account of the context in which the claim[s] of error occurred."⁵ In the

² *Lawrence v. Simmons*, 2005 WL 3454825 (Del. Supr.).

³ The Family Court found that it was in the child's best interest that the parties retain joint custody and that the placement schedule be amended.

⁴ Father requested the preparation of, but did not pay for, transcripts of the January 27, 2009 and March 10, 2009 hearings. As a result, this appeal proceeded without the transcript.

⁵ *Guest v. Guest*, 2003 WL 22931400 (Del. Supr.) (citing Del. Supr. Ct. R. 9(e)(ii), 14(e); *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987)).

absence of a basis for appellate review, we conclude that the judgments of the Family Court must be affirmed.⁶

NOW, THEREFORE, IT IS ORDERED that the judgments of the Family Court are AFFIRMED.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

⁶ *Fox v. Huffman*, 2009 WL 2859168 (Del. Supr.) (citing *Slater v. State*, 606 A.2d 1334, 1336-37 (Del. 1992)).